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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,549	01/30/2004	Paul Hebenstreit	C019836/0101147	6605
49328	7590	05/30/2006	EXAMINER	
BRYAN CAVE LLP 211 NORTH BROADWAY SUITE 3600 ST. LOUIS, MO 63102-2750			GIBSON, RANDY W	
			ART UNIT	PAPER NUMBER
			2841	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/768,549

Applicant(s)

HEBENSTREIT, PAUL

Examiner

Randy W. Gibson

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-21 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on May 1, 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed May 1, 2006 have been fully considered but they are not persuasive. Applicant argues that "Krolopp does not disclose a disengageable motor drive connection that provides the capability to completely disengage a drive motor from the load cell during the weighing process, thus eliminating extraneous inputs to the load cell from contact with the drive motor ... this arrangement does not provide the complete physical separation between the weigh station and the drive motor provided by Applicant's disengagable motor drive [emphases added]." The examiner cannot find this limitation anywhere in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-7 and 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Krolopp (US # 3,539,028). Krolopp disclosed the claimed invention including a load cell (14), processing circuitry (80), a rotating receptacle (2), a motor (64), and a disengageable connection between the motor & receptacle (60).

The preamble recitation the apparatus is for weighing “portions of semi-solid matter” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976); *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951); and *MPEP* § 2111.02.

In addition, the examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference (or, in the case of process claims, a manipulative difference) between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See, e.g., *In re Otto*, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963); *In re Sinex*, 309 F.2d 488, 492, 135 USPQ 302, 305 (CCPA 1962); and, *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 8-11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krolopp in view of Smith et al (US # 4,130,171). Krolopp discloses the claimed invention except for the use of the A/D/ converter, the storing of the tare weight of the empty scale in memory, the steps of delaying the reading of the scale until a certain time has passed, and averaging samples. Krolopp does not have any of the aforementioned elements or method steps because it has an analog controller. However, the examiner notes that it is extremely well known to upgrade from an analog controller to a digital microprocessor controller as shown by the example of Smith, which makes necessary the use of an A/D converter to allow the microprocessor to read the analog weight signal (Col. 6, lines 45-54). It would have been obvious to upgrade the device of Krolopp to include a more efficient digital controller.

It is inherent that a scale must subtract off the tare weight of the empty scale pan in order to be accurate, and Smith shows that a digital scale measures tare weight between weighings and stores it in memory to be used during the subsequent weighing operation in memory as claimed (Col. 7, lines 20-49). It would have been obvious to tare the scale of Krolopp for greater accuracy.

Smith also teach that it is known to delay the weight reading to allow the scale to settle, and to average the weight readings (Col. 7, lines 1-3; Col. 7, line 50 to col. 8, line 53). It would have been obvious to program the device of Krolopp to delay the weight reading to allow the scale to settle, and to average the weight readings, to improve the accuracy of the weight readings.

6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krolopp in view of Smith et al as applied to claims 8-11 & 20 above, and further in view of Hebenstreit (US # 6,441,321). The aforementioned combination mentions that this type of scale has problems with vibrations affecting the weight readings. Hebenstreit discloses that it is known to provide a load cell with a damper in order to allow the scale to settle faster (Col. 4, lines 43-67). It would have been obvious to the ordinary practitioner to include a damping mechanism in the device of Krolopp to improve accuracy and to lessen the delay interval (thereby increasing throughput).

Conclusion

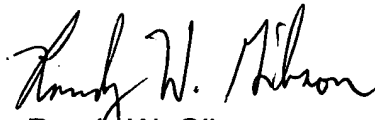
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on (571) 272-1957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Randy W. Gibson
Primary Examiner
Art Unit 2841